

**AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY  
MINUTES OF A PUBLIC HEARING**

DATE..... January, 28, 2004  
TIME..... 7:00 P.M.  
PLACE..... CO. OFFICE BLDG.  
20 N. 3<sup>RD</sup> STREET  
LAFAYETTE IN 47901

**MEMBERS PRESENT**

Mark Hermodson  
Gary Schroeder  
Jean Hall  
Steve Clevenger  
Ralph Webb  
Edward Weast

**MEMBERS ABSENT**

Bruce Junius

**STAFF PRESENT**

Sallie Fahey  
Margy Deverall  
Krista Trout  
Michelle D'Andrea  
Jay Seeger, Atty.

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 28<sup>th</sup> day of January 2004, at 7:00 P.M., pursuant to notice given and agenda posted as provided by law.

Attorney Jay Seeger called the meeting to order.

**I. ELECTION OF OFFICERS**

Gary Schroeder moved that Mark Hermodson be nominated for President. Steve Clevenger seconded the motion.

Jean Hall moved that nominations for President be closed. Steve Clevenger seconded the motion and the motion carried by voice vote.

Gary Schroeder moved that Jean Hall be nominated for Vice President. Steve Clevenger seconded the motion.

Gary Schroeder moved that the nominations for Vice President be closed. Steve Clevenger seconded and the motion carried by voice vote.

Mark Hermodson moved that a unanimous ballot be cast for Jean Hall for Vice President. Steve Clevenger seconded and the motion carried by voice vote.

Gary Schroeder moved that, Jay Seeger, legal counsel, be nominated for Secretary. Steve Clevenger seconded the motion.

Gary Schroeder moved that nominations for Secretary be closed. Steve Clevenger seconded and the motion carried by voice vote.

Mark Hermodson moved that a unanimous ballot be cast for Jay Seeger, legal counsel, for Secretary. Steve Clevenger seconded and the motion carried by voice vote.

**II. APPROVAL OF MINUTES**

Gary Schroeder moved to approve the minutes of the December 3, 2003 public hearing. Steve Clevenger seconded the motion.

Steve Clevenger pointed out a missing vote on page three of the minutes.

The motion with correction carried by voice vote.

**III. NEW BUSINESS**

Sallie Fahey informed the Board that **BZA-1655—DANIEL A. TEDER** had to be continued to the April 28, 2004 meeting pending an amendment by the Ordinance Committee. She stated that **BZA-1652-SIGNART, INC** asked to be moved to the end of the agenda because they are waiting for a representative from Michigan.

She explained that staff was in the process of printing out the slide presentation since the projector was not working. She said that the staff is recommending continuance of **BZA-1654-DOUGLAS & CYNTHIA GARWOOD**, but Mr. Garwood would still like to put it on the floor to discuss it.

#### IV. PUBLIC HEARING

Gary Schroeder moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the application to be heard this evening and responses from the checkpoint agencies. Steve Clevenger seconded and the motion carried by voice vote.

Gary Schroeder moved to continue **BZA-1652- SIGNART, INC** to end of the agenda. Steve Clevenger seconded and the motion carried by voice vote.

Gary Schroeder moved to continue **BZA-1655—DANIEL A. TEDER** to the April 28, 2004 meeting. Steve Clevenger seconded and the motion carried by voice vote.

Mark Hermodson waived the reading the meeting procedures because of the small size of the audience.

1. **BZA-1654—DOUGLAS & CYNTHIA GARWOOD:** Petitioners are requesting a variance to allow a 2.5' side setback instead of the required 6' to construct a new detached garage on an existing slab on property located at 3507 E 200 N, Fairfield 14(NE)23-4 (UZO 4-2-2) CONTINUED FROM THE DECEMBER MEETING AT THE BOARDS REQUEST. WITH CONDITION

Gary Schroeder moved to hear and vote on the above-described request. Steve Clevenger seconded the motion.

Krista Trout explained that at the December meeting, this case was heard and continued pending an investigation on whether there was a power line easement. She said that she found a copy of the plat and there is no easement platted for that lot. She said that she researched the previous owner's deeds to see if an easement was added later on, but did not find anything. She stated that she called the power company and because the power line has existed for so long there is a prescriptive easement and the power company was going to do more research and get back to her. She stated that an engineer from Cinergy has been working with Mr. Garwood and the power company was still investigating the proposal. She explained that the project engineer that has been working with Mr. Garwood has been out of town and has not yet reviewed the proposal. She stated that the field manager would like to wait until the project engineer has looked the plans over before proceeding because if anything does not meet code it would have to be moved or replaced at Mr. Garwood's expense.

Douglas Garwood, 3507 E 200 N, Lafayette, IN, presented a handout to the Board. He stated that he has worked with the power company since the fall of last year, even before he filed for the variance. He said that the engineer that has been working with him has known about this project from the beginning and addressed any potential code violations from the beginning. He stated that the building has been there for 73 years and the power line was put up in 1973. He explained that any code violations that would have existed then, would exist now. He referred to the diagram in the handout and pointed out the existing power line and the proposal for the new building, which showed it was not any closer. He pointed out the 2 existing poles and the proposed pole. He explained that the new pole would raise the power lines and be even further away from the structure. He said that the field manager visited the site to review the placement of the new pole and chose that spot because there would not be any obstructions to access it. He stated that there is no easement for the power line; there are just prescriptive rights that allow the power company to service anything on the site. He reiterated that there is accessibility to all of the poles and the lines do not conflict with any of their codes. He confirmed that anything that encroaches on the

power line would have to be moved at his own expense. He explained that if any codes were violated when the lines were put in, then the power company would be responsible for fixing it, but if anything is changed then it becomes his financial responsibility to fix it. He stated that the building could not be within 4-5 feet of the power line and the power line cannot be any lower than 12 feet. He said that neither of these requirements apply in that case. He concluded that there should be enough information to vote on this tonight and not continue it.

Sallie Fahey reiterated that the power company requested that the engineer have a final opportunity to review this proposal. She said that if the Board wanted to continue to hear the case, then staff would have an additional presentation.

Ralph Webb asked what would be gained by continuing this case.

Douglas Garwood stated that this was part of a long planning process that started last fall. He said that if he does not receive the variance, he would have to change his plans. He explained that he would have to start on these plans in late February and therefore his timeline would also change. He pointed out that at the last meeting the Board asked that 2 issues be resolved: the confirmation that the eave overhang was less than 2.5 feet; and that there was no easement. He stated that both of these issues have been resolved.

Ron Highland stated that if the variance is granted and the building is torn down, the building code does not allow any structure to be within 3 feet of a property line. He said that is a State regulation. He stated that if a variance is granted, it could not be granted any less than 3 feet from the property line.

Gary Schroeder asked for clarification that the State does not allow anything less than 3 feet and if it is less then it must be fire protected. He asked that if the Board approved this variance at 2.5 feet, that in order for the building permit to be issued it would have to be fire protected.

Ron Highland stated that was correct and it would have to have a 1-hour fire protection.

Gary Schroeder asked if a standard structure could be built if the variance was amended to 3-feet.

Ron Highland stated that it would have to be greater than 3-feet from the property line.

Jean Hall asked if a condition should be added.

Jay Seeger stated that a condition was not necessary because it is a valid requirement that had to be followed.

Ralph Webb asked if this was the first time the petitioner was hearing this requirement.

Douglas Garwood stated that he was not aware of this requirement. He stated that knowing this, he would reduce the plan by 7" in order to bring it in under 3-feet. He pointed out that if the variance is granted, then the building permit still has to be approved and inspected.

Edward Weast asked if the petitioner was amending the petition or leaving it as is.

Douglas Garwood stated that at this time he is not sure which route he would take. He explained that it did not have to be amended because if it were not amended, he would just have to have a firewall. He said that he would have to comply regardless of which way he goes.

Jean Hall stated that he could not see voting for something that was not in accordance with State regulations.

Douglas Garwood stated that it is not necessarily outside of the statue. He pointed out that if it is under 3-feet then it has to be fire protected.

Jean Hall stated that he understood that. He said that he would feel better about approving this request if there was a condition requiring that it be met.

Ron Highland asked if Jay Seeger could help out with this issue.

Jay Seeger stated that if the variance is approved as presented, at 2.5 feet, then it could be constructed, but only with a firewall. He said that if the petitioner decides not to put up the firewall then he would have to comply with the further than 3-feet setback.

Jean Hall stated that he understood that, but he feels that leaves it unclear.

Sallie Fahey stated that if the decision is to keep it at 2.5-feet, then it is clear what needs to happen. She pointed out that if the variance is approved at 2.5-feet, then it is approved for that specific site plan submitted with the application. She said that if the decision is to reduce it to less than 3-feet then a condition should be added that a new site plan be submitted.

Ralph Webb moved to continue **BZA-1654—DOUGLAS & CYNTHIA GARWOOD** to the February 28, 2004 meeting. Jean Hall seconded and the motion carried by voice vote.

2. **BZA-1656—PARADIGM DEVELOPMENT, LLC:** Petitioner is seeking a sign variance to permit 235 square feet of signage instead of the maximum allowed 104 square feet for the University Bookstore building located 352 West State Street, West Lafayette, Wabash 19(NE)23-4. (UZO 4-8-5)

Gary Schroeder moved to hear and vote on the above-described request. Steve Clevenger seconded the motion.

Krista Trout presented printed slides of the zoning map, aerial photo, site plan and 7 pictures. She read the staff report with recommendation of denial.

James Morog, Paradigm Development, 4751SR 43 N, West Lafayette, IN, presented a handout to the board. He pointed out that the bookstore has been there since 1940 and the owners have been good citizen of the community. He said that the hardship would be that the existing signage, if reduced, would detract from the businesses' ability to attract customers, both pedestrian and vehicular. He stated that the new signage addresses both pedestrian and vehicular traffic and is an enhancement to the overall community. He said that the request is not only appropriate, but it reduces the overall existing square footage.

Jean Hall said that he was glad to see the color rendition of the plan because it shows the large sign behind the glass window, which does not count in the total square footage.

James Morog pointed out that he was looking at an artist's rendition and not part of the actual plan.

Mark Hermodson stated that any business on a corner should have signage on both sides. He said that he did not agree with the sign on the north side since traffic runs the opposite way, drivers are already past the store by the time they see the sign and the pedestrian traffic can see the sign on the west wall. He said that he did not see the point of having the third sign.

James Morog stated that the unique aspect of this building was that it faced 2 major arterials and had three entrances. He explained the location entrances in comparison to the signs.

Mark Hermodson pointed out that the traffic faces the opposite direction on both arterials.

Tom Fry 352 W. State Street, West Lafayette, IN, stated that on the Grant Street side, their sign is completely blocked to pedestrians by trees and the Purdue Welcome sign. He said that upon exiting the Union or Stewart Center no one could tell what is around.

Mark Hermodson asked how big the sign for the northwest corner of the bookstore was proposed to be.

Krista Trout replied that it was 52 square feet.

Ralph Webb agreed with Mark Hermodson. He posed the hypothetical question as to whether the petitioner would reduce the request if the petition were to be declined or remove one of the signs.

Tom Fry stated that he would have to rethink the whole project. He stated that he would like to clean up and improve the building.

Mark Hermodson stated that he would like to see that building improved because it was in need of cleaning up. He said that he also wants to make sure that the sign ordinance is consistently adhered to.

Tom Fry mentioned that he had been before the APC in 1989 for renovations that started the whole village area. He pointed out that they are actually reducing the signage.

Steve Clevenger asked which existing signs were the ones that they did not know the pedigree of.

Tom Fry stated that basically everything on the building has been around for a very long time. He said that the last remodel of the store was in 1956 and there are no records prior to 1960.

Ralph Webb asked for confirmation that the number of signs did not matter so long as the total square footage came in under the requirement.

Sallie Fahey stated that was correct.

Gary Schroeder asked if the existing signage could be uses and still go ahead with the remodel.

Krista Trout stated that once the signs are taken down they lose their non-conforming rights.

Sallie Fahey stated that they would have to remodel around the existing signs.

The Board voted by ballot 1 to grant –5 to deny thus denying **BZA-1656—PARADIGM DEVELOPMENT, LLC** with one condition.

**Yes votes**

Gary Schroeder

**No votes**

Mark Hermodson

Jean Hall

Steve Clevenger

Edward Weast

Ralph Webb

3. **BZA-1652—SIGNART INC:** Petitioner is seeking a sign variance to permit 20.61 square feet of additional signage over and above the 499.82 square feet of existing fascia signage permitted by variance and prior ordinances for the Marsh grocery store, part of the integrated center located at 2410 N. Salisbury Street, West Lafayette, Wabash 7(SE)23-4. (UZO 4-8-7) CONTINUED FROM THE DECEMBER MEETING DUE TO LACK OF SIGN POSTING.

Gary Schroeder moved to hear and vote on the above-described request. Steve Clevenger seconded the motion.

Krista Trout presented printed slides of the zoning map, 2 aerial photos, 3 site plans and 7 pictures. She read the staff report with recommendation of denial.

Brad Rhodes, 5757 East Cork Street, Kalamazoo, MI, stated that the hardship is that because the building is over 300 feet from Salisbury, the signage is not readable from that road. He said that the sign in the parking lot did help with some identification. He stated that the sidewall was not only visible from US 52, but from the patrons visiting the plaza and buffet. He said that it is the same size sign as on the front of the building.

Paul Wayman, Charter One Bank, 2410 N. Salisbury, West Lafayette, IN, stated that this is a very complex parking lot and the proposed sign for the side of the building would be very beneficial for that traffic pattern.

Steve Clevenger asked how soon discussions for the planned development were set to begin.

Brad Rhodes stated that he has not heard any information on a planned development. He mentioned that the owner of this property did sign off on this petition.

Margy Deverall stated that she did not have a timeline on the planned development. She said that the owner of this property had been into the APC office in April of 2003. She stated that the discussions stopped because at the time Marsh was not ready for the expansion. Then early this year, the property owner informed staff that he would proceed with the PD because the Marsh expansion had been put in Marsh's 2004 budget

Jean Hall asked what effect there would be if they moved the bank sign from the front to the side.

Krista Trout stated that it would not have any effect because they would not be changing the overall signage.

Ralph Webb asked if the staff knew what the prevailing traffic pattern was for this property.

Sallie Fahey stated that they did not have any specific traffic studies. She said that as a patron of that center, she would testify that the bulk of the traffic comes in off of Navajo Street or the northbound side of Salisbury. She mentioned that some people might come into the center through Nighthawk. She pointed out that traffic could not turn left off of westbound US 52.

Steve Clevenger suggested using the integrated center sign instead.

The Board voted by ballot 0 to grant -6 to deny thus denying **BZA-1652—SIGNART INC.**

Mark Hermodson stated that unless any member has an objection the chair will order the findings of each member casting a vote for the majority decision of the Board to be the collective findings of the Board in support of the decision of the Board. Hearing none, it is so ordered.

## **V. ADMINISTRATIVE MATTERS**

Mark Hermodson informed the Board that Joseph T. Bumbleburg had won the Sagamore of the Wabash.

## **VI. ADJOURNMENT**

Gary Schroeder moved for adjournment. Steve Clevenger seconded and the motion carried by voice vote.

The meeting adjourned at 8:15 P.M.

Respectfully submitted,



Michelle D'Andrea  
Recording Secretary

Reviewed by,



Sallie Dell Fahey  
Executive Director